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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GIUSEPPE PAMPENA, on behalf of himself and all others similarly situated,

Plaintiff.

vs.

ELON R. MUSK,

Defendant.

| CASE NO. 3:22-CV-05937-CRB

**DECLARATION OF CONOR C.
MCNAMARA IN SUPPORT OF
DEFENDANT ELON MUSK'S
ADMINISTRATIVE MOTION TO SEAL
DOCUMENTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Judge: Hon. Charles R. Breyer

1 I, Conor C. McNamara, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and an attorney at
3 the law firm Nixon Peabody LLP, counsel for non-party Yoel Roth.

4 2. Pursuant to Civil Local Rule 79-5, Mr. Roth hereby submits this Declaration in
5 Support of Defendant Elon Musk's Administrative Motion to Seal Documents in Support of
6 Motion for Summary Judgment [ECF No. 254] (the "Motion to Seal").

7 3. Mr. Roth is not a party to this action.

8 4. With the Motion to Seal, Defendant filed Exhibit Q to the Declaration of Stephen
9 A. Broome [ECF No. 254-11], which purports to be a true and correct copy of an excerpt from the
10 transcript of the deposition of Mr. Roth, taken on September 17, 2022 (the "Transcript Excerpt"),
11 in *Twitter, Inc. v. Musk, et al.*, C.A. No. 2022-0613-KSJM (Del. Ch.) (the "Delaware Action").

12 5. The Transcript Excerpt was designated as CONFIDENTIAL in the Delaware
13 Action and, according to the Motion to Seal, was re-produced in this action pursuant to the
14 Stipulation and Order [ECF No. 116] governing discovery materials in the Delaware Action.

15 6. In accordance with this designation, the Motion to Seal seeks to file under seal the
16 entirety of the Transcript Excerpt. This requested relief is necessary and narrowly tailored to
17 protect the confidentiality of the information contained.

18 7. Mr. Roth agreed to certain confidentiality-related employment covenants when he
19 was employed with Twitter, including a confidentiality agreement that requires Mr. Roth to take
20 all reasonable precautions to prevent any unauthorized use or disclosure of confidential
21 information, which includes any information that, if disclosed, could be detrimental to the
22 interests of Twitter. The confidentiality agreement provides a non-exhaustive list of examples of
23 such information, which includes, but is not limited to, user and customer data, marketing plans,
24 business strategies, ideas, technology, financial information, forecasts, engineering, and other
25 business information. The confidentiality agreement provides that any applicable nondisclosure
26 obligations apply both during and after Mr. Roth's employment with Twitter.

27 8. Neither Mr. Roth nor X Corp. f/k/a Twitter ("X") is the party seeking to file the
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1 material designated as CONFIDENTIAL in the public record.

2 9. Mr. Roth has not authorized, nor does he intend to authorize, the public disclosure
 3 of any confidential or proprietary information belonging to his former employer for which he
 4 does not already have permission for such disclosure; nor should this declaration be construed as
 5 a waiver of any confidentiality rights or protections held by X or any other party.

6 10. Counsel for X notified Mr. Roth's counsel that it is X's position that non-public
 7 information relating to and arising from Mr. Roth's employment at Twitter before the October 27,
 8 2022 closing of the merger with X that includes sensitive non-public information regarding the
 9 company's operations, business practices, and internal personnel matters during that period is
 10 confidential and should not be disclosed publicly. X further stated that the continued confidential
 11 treatment of these materials is necessary to protect the company's proprietary and sensitive
 12 business information, and that public disclosure could cause harm to X's legitimate business
 13 interests. The excerpts of Mr. Roth's deposition addressing such pre-merger matters should
 14 therefore remain designated as CONFIDENTIAL.

15 11. The Ninth Circuit applies two tests to determine whether a party is entitled to file
 16 certain documents under seal. The "good cause" test applies to "sealed materials attached to a
 17 discovery motion unrelated to the merits of [the] case[.]" *Ctr. for Auto Safety v. Chrysler Grp.,*
 18 *LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). The "compelling reasons" standard applies to cases
 19 involving "dispositive motions" as well as any other motions that are "more than tangentially
 20 related to the merits of [the] case." *Id.* at 1101.

21 12. Here, compelling reasons support sealing the Transcript Excerpt. Courts hold that
 22 a party has a compelling reason to seal information if sealing is required to prevent information
 23 from being used "as sources of business information that might harm a litigant's competitive
 24 standing." *Auto Safety*, 809 F.3d at 1097. Sealing has been found warranted when a public
 25 record might be used to "gratify private spite or promote public scandal" and for "proprietary
 26 business, scientific, manufacturing, sales, or licensing information." *Plexxikon Inc. v. Novartis*
 27 *Pharm. Cor.*, 2020 U.S. Dist. LEXIS 44014, at *3-6 (N.D. Cal. 2020). For these reasons, good
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1 cause exists to seal these portions of the Transcript Excerpt. *See, e.g., Epicentrx, Inc. v. Carter,*
2 2021 U.S. Dist. LEXIS 191068, at *7 (S.D. Cal. 2021) (emphasis added) (“Plaintiff seeks to file
3 Exhibit J under seal ‘to honor this contractual duty of confidentiality.’ Because the public
4 dissemination of Exhibit J could harm Plaintiff’s business relationship with its collaborator, the
5 Court concludes that Plaintiff has identified sufficiently compelling reasons to file that document
6 under seal.”).

7 13. Additionally, as publicly reported, Mr. Roth faced significant privacy and safety
8 concerns after he left Twitter. The Transcript Excerpt contains detailed discussions of internal
9 company policies, as well as Mr. Roth’s role in reviewing investigative work, approving
10 enforcement policies, and making determinations about account suspensions and visibility
11 restrictions. Given the high-profile nature of the litigation and the public interest in Defendant
12 and X’s internal operations, public disclosure of such information could expose Mr. Roth to
13 additional unwanted attention, scrutiny, or targeted harassment or retaliation from individuals or
14 groups dissatisfied with the company’s policies or enforcement actions. *See Lees v. Mariscal*,
15 2022 U.S. Dist. LEXIS 66584, at *5 (N.D. Cal. 2022) (“[T]he privacy and safety of a nonparty is
16 a compelling reason for sealing records.”); *Houston Mun. Emples. Pension Sys. v. BofI Holding, Inc.*,
17 2017 U.S. Dist. LEXIS 42647, at *3 (S.D. Cal. 2017) (granting motion to seal where
18 “nonparty former employee” provided documents subject to a discovery dispute and “fear[ed]
19 retaliation and potential use of her information for improper purposes”).

20 14. Accordingly, the reasons for sealing the Transcript Excerpt outweigh any benefit
21 of making it public.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 || Executed on August 21, 2025, in San Francisco, CA.

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By: /s/ Conor C. McNamara
Conor C. McNamara

CERTIFICATE OF SERVICE

I, Conor C. McNamara, am admitted to practice in this Court, and I hereby certify that a true and correct copy of the foregoing document was filed with the Court and electronically served through the CM-ECF system which will send a notification of such filing to all counsel of record.

Dated: August 21, 2025

NIXON PEABODY LLP

By: /s/ Conor C. McNamara
Conor C. McNamara